

MINUTES
LICENSING COMMITTEE MEETING
TEXAS BOARD OF PROFESSIONAL ENGINEERS
1917 IH35 South
AUSTIN, TX 78741
August 19, 2009 —10:30 AM

Call to Order. Acting Committee Chair Shannon K. McClendon, called the Licensing Committee meeting to order at 10:48 a.m. at the Texas Board of Professional Engineers, 1917 IH35 South, Austin, TX. (NOTE: All votes are unanimous unless otherwise indicated.)

1. Roll call and welcome visitors.

Shannon K. McClendon	Acting Chair
G. Kemble "Kem" Bennett, Ph.D., P.E.	Member
James "Jim" Greer, P.E.	Member

A quorum was present. Jeb Boyt, Assistant Attorney General, and Veena Mohan, Assistant Attorney General were present to provide legal counsel.

The following staff members were present:

Dale Beebe Farrow, P.E.	Executive Director
Lance Kinney, P.E.	Deputy Executive Director
David Howell, P.E.	Director of Licensing
C.W. Clark, P.E.	Director of Compliance & Enforcement
Tyler Ferguson	Investigator
Dorothy Nieto	Executive Assistant

Visitors. David Lancaster, Texas Association of Architects; Peyton McKnight, Texas Council of Engineering Companies; Deena Wallace, TX A&M; Kyle Womack, P.E., Past President, TSPE; Ian Berry, Office of the Attorney General; Lauren Schoenbaum, Office of the Attorney General.

Personal Appearances. Alberto Ayala, Richard Bryan, Brian Jacob Butscher, Jinsop Joe Perez, Christopher John Renedo, and Shawn C. Sturhan.

2. Public comment. None.

The Acting Chair took agenda item #6 out of order, see below.

3. Discuss and possibly approve the June 17, 2009, Licensing Committee Minutes.

It was MOVED/SECONDED (Greer/Bennett) to approve the June 17, 2009 Licensing Committee Minutes. A vote was taken, and the MOTION PASSED.

Discuss and Possibly Act on the Following Items:

4. Proposed Rule Adoptions

- **§133.63 - Texas Engineering Professional Conduct and Ethics Exam.** This rule change will increase the passing score for the Ethics exam from 70 to 90. The rule was posted in the Texas Register and no comments were received.

- **§133.81 - Receipt and Processing of Applications by the Board.** This rule change will accept any significantly altered application as a new application and process it under the current rules in place at the time the new application was accepted. The rule was posted in the Texas Register and no comments were received.

It was MOVED/SECONDED (Bennett/Greer) to recommend to the Board at its Regular Quarterly Board meeting on August 20, 2009 to adopt §§133.63 and 133.81. A vote was taken, and the MOTION PASSED.

5. Discussion and update on Member Board Administrators (MBA) findings regarding sealing reference statements.

The question regarding sealing reference statements was emailed to all the MBAs provided by the National Council of Examiners for Engineers and Surveyors (NCEES). The staff received 28 responses; 16 of these responses stated that they ask for seals on the reference statements but it is not in their rules or a requirement; some require the seal on experience verification but not on the reference statement but this is not in their rules; some responded that no seal is required and out-of-state references are verified via the state agency's website; Texas requests a copy of their pocket card and out-of-state references are verified via the state agency's website; several Boards do not require seals or verification; New York does not require PE references due to the industrial exemptions. The responses show there is no standard practice, rule, or statute in place regarding the sealing of reference statements. Some states mentioned they have sections in their rules or law that allows "other" non-engineering documents to be signed and sealed by a PE. The Committee discussed the information presented and agreed that no change regarding reference statements is required. No action was required on this agenda item.

Personal Interviews:

6. Discuss and possibly act on applications for licensure.

Richard Bryan. Mr. Bryan came before the Committee to appeal the invalidation of the NCEES Fundamentals of Engineering (FE) exam he took at the Fort Worth site. The invalidation was based on the NCEES proctor's report received by the Board. Mr. Bryan thanked the Committee for allowing him to share his experience. He provided the Committee his assigned seat and exam number. He pointed out the inconsistencies he noted in the reports, which staff had provided to him. He said the view from his seat to the proctor podium was obstructed. He commented that he was never approached by a proctor or informed of a violation. The reports state that the examinee was in the act of placing the pencil down when the proctor was walking towards him.

The Committee discussed the inconsistencies in the Proctor and Chief Proctor reports. The Committee agreed that the policy states "the examinees must stop writing or their exams will be invalidated". The reports state that Mr. Bryan was in the process of placing his pencil down which is not a violation. Mr. Howell informed the Committee that he spoke to the Chief Proctor, and that she did not have any additional information to add to the report. The Committee unanimously agreed that the reports are vague and inconsistent and will recommend to the Board to validate Mr. Bryan's exam results.

It was MOVED/ SECONDED (Bennett/Greer) to recommend to the Board at its Regular Quarterly Board meeting on August 20, 2009, to validate the Fundamentals of Engineering Exam (FE) taken by Mr. Richard Bryan due to an inconclusive report received by the NCEES. A vote was taken, and the MOTION PASSED.

Mr. Howell said he would send a written request to the NCEES regarding the Board's decision to validate Mr. Bryan's exam. Mr. Boyt requested that the Board also suggest that NCEES modify their proctor irregularity forms to allow ample space for notation of what actually occurred, and the form should be

signed by everyone that will be considered as a potential witness. He also added that the written request for validation should include a clarification to NCEES that the Board's decision was based on the inconsistencies in the written reports.

Alberto Ayala. This applicant came before the Committee to request to take the PE exam. He was referred to the Committee by staff due to criminal convictions. Mr. Ayala addressed the Committee and thanked them for allowing him a personal interview. He commented to the Committee that both incidents were during his younger years. According to the applicant, he has completed both of his sentences. The Committee was not provided the official document that states he has completed his sentence from California. The applicant was only sent the docket, but he did complete his sentence in February 2009. Mr. Ayala's California probation was transferred to Texas. He commented that he has voluntarily taken and completed a drug free course.

Ms. McClendon informed all the applicants that the Board takes the criminal convictions very seriously. She informed all applicants present that an application to become a professional engineer accepted by the Board is also weighed on character which is held to the similar standards as attorneys and doctors. Professional Engineers must report any criminal conviction which will then come before the Board. The Board is entrusted with protecting the people of Texas by ensuring that professional engineers are safe, make good judgments, and will be law abiding citizens.

The applicant was asked to share with the Committee how his life has changed what efforts he has made to moving forward. According to Mr. Ayala both incidents occurred while he was single and in college. His marriage and plans to have a family within one year are significant changes he has made with his life. He always wanted to be a professional engineer and takes a lot of pride in his current job. He commented that he regrets his unfortunate decisions and hopes to move forward in his career.

Mr. Ayala was asked to provide three additional references (personal and PEs) from the time of the applicant's incidents to date, which show how Mr. Ayala has changed throughout this time period. The applicant does not have to appear before the Board if Mr. Howell receives the references on time and determines that the references are favorable.

It was MOVED/SECONDED (Greer/Bennett) to recommend to the Board at its Regular Quarterly Board meeting on August 20, 2009, to allow Mr. Ayala to take the PE exam upon sending official documentation to Mr. Howell that his sentence in California has been completed as well as three additional personal references from PEs and/or professionals that recognize the applicant has made changes between the time incidents occurred to date and the contents of the references are determined as favorable by Mr. Howell. A vote was taken, and the MOTION PASSED.

Mr. Howell informed the applicant that the deadline for submitting the required references is September 4.

Brian Jacob Butscher. This applicant came before the Committee requesting to take the PE exam. He was referred to the Committee by staff due to a criminal conviction. Mr. Butscher informed the Committee that he was arrested February 2, 2005, and was charged and convicted with a misdemeanor charge of possession of marijuana. He received deferred adjudication with nine months probation, 40 hours of community service, a fine, and was required to complete a drug free course. He completed his community service in one month, paid all his fines upfront, and enrolled and completed the drug course as soon as it was available. He understands the seriousness of this incident. He added that it was a one time mistake and will never happen again. He has made many changes in his life.

It was MOVED/SECONDED (Bennett/Greer) to recommend to the Board at its Regular Quarterly Board meeting on August 20, 2009, to allow Mr. Butscher to take the PE exam. A vote was taken, and the MOTION PASSED.

As a result of the current personal interviews, the Committee and Mr. Howell discussed and agreed to change the policy and request additional references from applicants as needed.

Steven William Moore. This applicant came before the Committee requesting licensure in Texas. He is currently licensed in other states and has passed both the FE and PE exams. The applicant declined to appear before the Committee. According to the information submitted by the applicant, he is currently on informal probation which indicates that he has not completed his probationary term, therefore the Committee agreed to deny his request.

It was MOVED/SECONDED (Bennett/Greer) to recommend to the Board at its Regular Quarterly Board meeting on August 20, 2009, to deny Mr. Moore's request to take the PE exam until he has documentation that he has completed his deferred adjudication probation and also submitted the required additional references. A vote was taken, and the MOTION PASSED.

Jinsop Joe Perez. This applicant came before the Committee requesting to take the PE exam. He was referred to the Committee by staff due to a criminal conviction. Mr. Perez thanked the Committee for allowing him a personal interview. He said he changed his life after this incident. According to the applicant the charge was reduced to "obstruction of a highway" and a \$2,500 fine which has been paid in full. According to the applicant, he has voluntarily enrolled and completed the Texas DWI Education Program and AA classes.

It was MOVED/SECONDED (Bennett/Greer) to recommend to the Board at its Regular Quarterly Board meeting on August 20, 2009, to allow Mr. Perez to take the PE exam. A vote was taken, and the MOTION PASSED.

Mr. Boyt, General Counsel for the Board shared with the Committee and guest present that a licensing Board has revoked a license by operation of law after learning that the professional served 60 days in prison; no hearing required, and no further action necessary. He reminded everyone the serious consequences of their actions.

Christopher John Renedo. This applicant came before the Committee requesting to take the PE exam. He was referred to the Committee by staff due to a criminal conviction. Mr. Renedo thanked the Committee for allowing him to relay to them the nature of his incident. He said that the incident occurred during crucial changes in his life; he was recently married, found out they were expecting a child, and he was unemployed. He said he learned a lot from this experience, and is trying to move forward. He said significant changes have occurred in his life since the incident. They have purchased a new house, experiencing the joys and challenges of raising their son, and currently expecting their second child. He stated that the experience of raising a family really instilled maturity and grounded him in life.

The Committee discussed with the applicant their concerns regarding his outburst of anger under stressful situations. The Committee requested the applicant provide three additional references from professionals that may attest to changes he has made after his incident to date, and invited him to appear at the next scheduled Licensing Committee. Mr. Boyt asked the applicant if he has considered or attended anger management training or counseling. Mr. Renedo responded that he has not. Mr. Renedo opined that he has learned a lesson and has changed. He added that this incident was unexpected, and he realizes he

made a mistake. Ms. McClendon informed the applicant that the Committee is tasked with evaluating an applicant's character to ensure that they have a professional engineer requirement.

It was MOVED/SECONDED (Bennett/Greer) to recommend to the Board at its Regular Quarterly Board meeting on August 20, 2009, to postpone the decision on Mr. Renedo's request to take the PE, pending submittal of three additional references from professionals (from the time of the incident to the present) and to appear before the next scheduled Licensing Committee. A vote was taken, and the MOTION PASSED.

Shawn C. Sturhan. This applicant came before the Committee requesting to take the PE exam. He was referred to the Committee by staff due to multiple criminal convictions. Mr. Howell summarized the incidents from 2000 to 2006. The applicant thanked the Committee for allowing him a personal appearance. According to the applicant, the earlier offenses were during his college years. According to Mr. Sturhan, he realizes he was very irresponsible and immature during these years. He takes full responsibility for all his actions. According to the applicant he has completed his sentences, paid his fines, tried his best to keep out of trouble, and made significant changes in the last three years. He mentioned that he is engaged, looking to purchase a house, and start a family after marriage. Mr. Sturhan said that he has matured, changed friends, and if he decides to drink, he takes a cab. He commented that he has always wanted to be an engineer. Dr. Bennett asked the applicant regarding the jail time served in 2000. The applicant responded that he completed his jail term during the weekends. Dr. Bennett asked the applicant to explain further the 2006 incident. According to Mr. Sturhan, the TABC was conducting a sting operation at local bars. Mr. Boyt added that TABC has been in the news regarding these tactics. Mr. Boyt read an editorial in the local paper addressing the TABC tactics that occurred in 2006. Dr. Bennett asked the applicant if he felt he had a drinking problem. The applicant said he does not believe he has a drinking problem; he was reckless during his younger years and didn't realize it would affect him later in life.

It was MOVED/SECONDED (Greer/Bennett) to recommend to the Board at its Regular Quarterly Board meeting on August 20, 2009, to allow Mr. Sturhan to take the PE exam. A vote was taken, and the MOTION PASSED.

Dr. Bennett added that the Board is very strict regarding character references this ensures an honorable profession which currently professional engineers often comment about. He encouraged the applicant to keep in mind the seriousness of his past pattern and how it will affect his future if it continues.

The Acting Chair called for a lunch break at 12:23 p.m.
The Acting Chair reconvened the meeting at 12:54 p.m.

The Chair reverted back to the beginning of the agenda, started with agenda item #3, see above.

Discuss and Possibly Act on the Following Item:

7. Discussion and update on Licensure Process for Structural Engineers.

Ms. Beebe Farrow explained that changes in the NCEES Structural PE Exams will be effective April 2011. Several states with structural engineering licensure have specific state requirements which are distinctively different from the regular PE requirements. NCEES conducted a review of the structural exam content and requirements, including state-specific requirements, and as a result developed the new structural engineering exam format. The current structural I and II exams will be replaced with a 16 hour structural exam. The staff would like the Board to consider how Texas should handle this change. A consideration could be to engage a taskforce to include the Structural Engineering Association of Texas (SEAoT). It is believed that currently there is a national movement by SEAoT to create a separate engineering

designation across the nation for Structural Engineers. The Board has a database that identifies engineers according to their branch; a possibility could be to identify those that have taken the Structural I exam or both. Those that have taken both exams as of October 2010 may be identified as a Structural II Engineer. One of the difficulties is having a separate designation is how to handle engineers designated as Structural Engineers before 2011. Mr. Howell added that some states have informed their structural engineers that they must go back and take both existing structural engineering exams or take the new 16 hour structural exam beginning April 2011. He has been informed that several structural engineers that have taken the Structural I exam are preparing to take the Structural II exam to be in compliance in place of taking the 16 hour exam. Mr. Kinney added that one of the MBA's concerns is how structural engineers will be notified and how each state will address this new change. Mr. Greer asked how reciprocal licensure will be handled. Mr. Howell responded that there are some Texas engineers that take the Structural II exam for reciprocity consideration. The Committee directed staff to contact someone from SEAoT and invite them to the next scheduled Licensing Committee meeting to share their position on this change.

Reports and Possible Action Thereon:

8. Results and statistics:

- **Application and Examination Report.**

Mr. Howell discussed the report with the Committee. Ms. McClendon asked about the October drop in pass rate. Mr. Howell responded that it may be related to the beginning of classes. Ms. McClendon asked for a national comparison. Mr. Greer asked if the Board has looked at these areas geographically. Ms. McClendon would like for the Board to think about outreach efforts focusing on the possibility of assisting the geographical areas that show a drop in rate. Mr. Kinney responded that staff has contacted the Dean of UT El Paso. Mr. Howell added that Mr. Cardenas requested the report and has addressed this situation in his outreach. Mr. Boyt asked on average how many times the FE is taken. Mr. Howell responded that most people take it and pass it on the first time.

- **Report on Exam statistics for Applicants who have been approved by the Licensing Committee.**

Mr. Howell said the report is information from the past two years regarding applicants that were approved by the Licensing Committee to take the PE exam. There were 19 applicants; 5 passed the first time they took the exam; 5 passed the second or third time they took the exam; 5 failed the first time but have additional opportunities to take the exam; 2 failed the first or second time and did not register for the third or fourth time so they are done; 1 failed on the fourth try so they must reapply if they want to take the exam again; and 1 never registered to take the exam. More than 50 percent of the applicants passed. Ms. McClendon asked Mr. Howell to identify the applicants with a criminal conviction and present at the next scheduled Licensing Committee meeting.

9. Update on Agreement with Engineers Canada.

The revised proposed agreement was sent to Engineers Canada. The Board was informed that the agreement has been sent to Canada's International Committee; the International Committee has one minor language change, a jurisdictional issue, and stated that everything else is fine. The proposal has been sent out to their provincial Boards for their review. Mr. Kinney met with Ken McMartin and they continue to work together. Ms. Beebe Farrow met with their new executive director, Ms. Chantal Guay at the NCEES annual meeting. Mr. McMartin believes the Boards will come back in favor of the agreement. The ABET Conference will be in San Antonio in late October which will be another opportunity to work with Engineers Canada face to face.

10. Report on Software Engineering.

Mr. Kinney reported that a milestone was reached when the tenth state (Alabama) joined in the effort to ask NCEES to develop a Software Engineering Exam, and IEEE agreed to be the technical society. Mr. Jerry Carter, Executive Director of NCEES, was kind enough to have this agenda item on NCEES's Board of Director's meeting at the NCEES Annual meeting in Louisville. By the time Mr. Kinney arrived at the meeting, the Board of Directors had approved the Software Engineering exam development, and everyone at the meeting was aware of the news. This has moved to the EPE Committee to begin the development process. Ms. McClendon commented that this is a huge accomplishment. She added that this is a celebration and should not be overlooked as a simple report. Ms. Beebe Farrow shared that Mr. Dan Wittliff is working on a congratulation letter and asked Dr. Bennett to sign the letter. Ms. McClendon commended Mr. Kinney for driving the team and never dropping the ball. Mr. Kinney said while this part is now with NCEES to develop the exam, the group that met in St. Louis recognized that the next phase is guidance to each state on how to implement this new licensure discipline. The Texas Engineering panel, IEEE, and other groups will start drafting the guidelines (similar to a model law) for this new licensure.

11. Issues for consideration and schedule next meeting.

Adjourn.

Ms. McClendon adjourned the meeting at 1:37 p.m.

Date the Committee approved the minutes as edited:	November 18, 2009
Date the Board accepted the minutes:	November 19, 2009